



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

Paper No. 28

Amin & Turocy LLP
1900 East 9th Street
24th Floor National City Center
Cleveland, OH 44114

COPY MAILED

APR 13 2005

OFFICE OF PETITIONS

In re Application of: :
James Cisar : DECISION ON PETITION
Appl. No. 09/921,103 : UNDER 37 CFR 1.183
Filed: August 2, 2001 :
Atty. Docket No. TELNP120USA :

This reissue application is before the Office of Patent Legal Administration, for consideration of the Renewed Petition Under 37 C.F.R. §1.183, filed January 6, 2005.

The petition is granted.

BACKGROUND

37 CFR 1.172 requires that a reissue oath/declaration be made by the inventors, except as otherwise provided (§§ 1.42, 1.43, 1.47), where the scope of the claims of the original patent is being enlarged.

This reissue application, which seeks to broaden the scope of the claims, was filed with signature of sole inventor James Cisar on the original declaration. A supplemental declaration under 37 CFR 1.175(b)(1) was required by the examiner in the Office action of August 12, 2003. A supplemental declaration, filed October 24, 2003, was not accepted by the examiner. See Office action mailed January 22, 2004.

The initial petition filed April 20, 2004, was dismissed for failure to include a supplemental declaration under 37 CFR 1.175(b)(1). The petition stated that such a supplemental declaration was included; however, no such declaration was among the papers present on petition.

On instant renewed petition, petitioner submitted a copy of their itemized and date-stamped postcard receipt, showing that the supplemental declaration was among the papers filed on initial petition. In addition, petitioner submitted a copy of the supplemental declaration under 37 CFR 1.175(b)(1) signed by the assignee, a reissue patent application statement as to loss of original patent, and a statement under 37 CFR 3.73(b).

DECISION

35 U.S.C. 251, which is directed to reissue, does not address the signature requirements of a declaration in reissue. 37 CFR 1.172 requires that a reissue declaration be made (and signed) by the inventors, except as otherwise provided (§§ 1.42, 1.43, 1.47), where the scope of the claims of the original patent is being enlarged. 37 CFR 1.175(b)(1) requires that:

"For any error corrected, which is not covered by the oath or declaration submitted under paragraph (a) of this section, applicant must submit a supplemental oath or declaration stating that every such error arose without any deceptive intention on the part of the applicant."

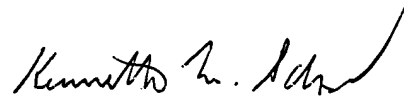
37 CFR 1.175(b)(1), taken in conjunction with 37 CFR 1.172, requires a supplemental declaration to be signed by all of the inventors (in this instance, there is one inventor). This is because all oaths or declarations necessary to fulfill the rule requirements in a reissue application are taken together collectively as a single oath or declaration. Thus, each oath and/or declaration must bear the appropriate signature of the inventors. See *In re Hayes*, 53 USPQ2d 1222 (Comm'r Pat. 1999).

37 CFR 1.183 permits, in an extraordinary situation, waiver of a rule which is not a requirement of the statute, where justice requires such waiver, and applicant has requested such a waiver of the requirement that the 37 CFR 1.175(b)(1) supplemental declaration be signed by the inventor.

The initial petition was accompanied by an appropriate showing that the inventor is unavailable. On renewed petition, petitioner has now met the outstanding requirement for granting of the petition under § 1.183. A Supplemental Reissue Application Declaration executed by Glenn Frankenberger on behalf of assignee Symbol Technologies, Inc. has now been supplied. The declaration both includes a statement that Mr. Frankenberger is authorized to sign on behalf of the assignee and is accompanied by a STATEMENT UNDER 37 CFR 3.73(b).

CONCLUSION

1. In view of the above, the present petition under 37 CFR 1.183 to waive the rules is granted.
2. The provisions of 37 CFR 1.175(b)(1), and 37 CFR 1.172 are hereby waived to the extent that the "Supplemental Reissue Application Declaration by the Assignee" submitted with the present petition will be accepted as though it was signed by the inventors.
3. The present application is being forwarded within the Office of Patent Legal Administration for completion of the screening process pursuant to MPEP 1456, Reissue Review.
4. Telephone inquiries related to this decision may be directed to Nancy Johnson, Senior Petitions Attorney at (571) 272-3219.



Kenneth M. Schor
Senior Legal Advisor
Office of Patent Legal Administration